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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,972	05/11/2001	Barry Ross	017227/0171	7954

7590 12/03/2002
Foley & Lardner
Washington Harbour
Suite 500
3000 K Street
Washington, DC 20007-5109

EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/03/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,972

Applicant(s)

ROSS, BARRY

Examiner

Blessing M. Fubara

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Examiner acknowledges receipt of request for extension of time and amendment C filed 09/03/02.

Specification

The objection to the specification in terms of the abstract and the linking group X is withdrawn because of the amendment and submission of an abstract.

Claim Rejections - 35 USC § 112

1. Claim 7 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; claim 7 is indefinite since it is not clear what the "said" refers to in line 1 of the claim.

Claim Rejections - 35 USC § 102

2. Claims 1-12 remain rejected under 35 U.S.C. 102(b) as being anticipated by Matthews et al. (WO 95/34595).

Applicant appears to draw a distinction between antiviral activity and inhibition of toxic material or substance by stating that antiviral activity refers to the inhibition of the replication of the virus and not to the replication of the any toxic material/substance originated from the virus. Applicants further state that toxin is not an infectious agent like a virus.

3. Applicant's arguments filed 09/03/02 have been fully considered but they are not persuasive.

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Upon reference to applicant's specification, page 9, lines 4-10, and figure 1 it appears that "toxic materials or substances" embrace the actual viruses themselves as well as toxic substances released from the viruses. Therefore, when interpreting the claims in view of applicant's specification, the Examiner respectfully submits that the claims even as amended appear to read on method of inhibiting viral activity.

Double Patenting

1. Claims 1-12 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,190,650. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application for the most part recites a method of prophylactic or therapeutic inhibition ... where the method comprises administering an effective amount of a dendrimer to a patient in need thereof, the application also teaches a composition that comprises said dendrimer. The issued patent for the most part teaches a composition comprising said dendrimer and also teaches a method for administering the composition to treat or inhibit the same conditions or infections that are caused by toxins. It would be obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of the issued patent. One having ordinary skill in the art would have been motivated to administer the composition of the issued patent to a patient in need thereof because the issued patent suggests administration.

Applicant argues that the issued patent is not directed to inhibiting the activity of a toxic substance and not a method for antiviral treatment.

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4. Applicant's arguments filed 09/-3/02 have been fully considered but they are not persuasive.

Upon reference to applicant's specification, page 9, lines 4-10, and figure 1 it appears that "toxic materials or substances" embrace the actual viruses themselves as well as toxic substances released from the viruses. Therefore, when interpreting the claims in view of applicant's specification, the Examiner respectfully submits that the claims even as amended appear to read on method of inhibiting viral activity. The scope of the issued patent is encompassed within the scope of the claimed invention.

A terminal disclaimer will overcome this rejection.

5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification including the claims.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

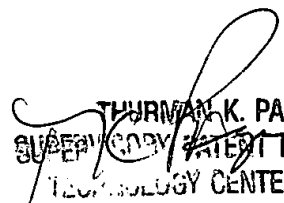
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
December 1, 2002


THURMAN K. PAGE
SUPERVISOR
TECHNOLOGY CENTER 1600